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# CODES

**CO-DESIGN**

**FOR**

**SUSTAINABILITY**

**D 3.2 Specifications and requirements for  
Managing copyright agreements**

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Assessment on copyright and intellectual property rights; template and formats for copyright agreements; tools for IP protection

Copyright and intellectual property considerations; template and formats for copyright agreements; tools for the protection of intellectual property

## 1. Introduction

Intellectual property law (IPR) refers to the protection of new and unique ideas, products and creations resulting from human creativity and innovation. *Copyright* (or copyright), trademarks and patents, database rights and performance rights are the most important ones also when it comes to digital content. Once creative effort and innovation are protected, the rights to them can be traded, sold and bought, bequeathed or licensed.

The **industrial property** has its own specific legal protection, through the recognition of the created/produced invention, guaranteed by the registration of the patent and trademark. They are the ones that the law identifies as **distinctive signs** which, in addition to the brand, also includes the company, the sign, the geographical indication and the designation of origin. This possibility is recognized specifically for inventions, while as regards artistic works their protection derives from **copyright**, which concerns all literary and artistic works, including television and advertising programmes, as well as multimedia products and computer software.

The expression "*Intellectual property*" therefore refers to intellectual creations in general: inventions, literary and artistic works, symbols, names, images and drawings used in commerce.

It is conventionally divided into two categories:

- A) **Industrial property**, which includes inventions (patents), trademarks and other distinctive signs, industrial designs and geographical indications of origin, topographies of products and semiconductors, utility models, confidential company information and new plant varieties;
- B) **Copyright**, which includes literary and artistic works, such as novels, poems and plays, films, musicals, choreographic and pantomime works, artworks such as drawings, paintings, photographs, sculptures together with architectural drawings, as well as computer programs and the databases.

Rights related to copyright are those of the artists in their performances, those of the broadcasters in their radio and television programs. These rights are placed alongside the category of copyrights, which arise at the very moment in which the intellectual work takes shape and which grant the author exclusive powers of economic use of the work itself. Although the patrimonial right on the intellectual work is unique, the legislators have attributed to the authors some specific rights, independent of each other, to economically use the protected works. It should also be remembered that, even in the case of definitive or temporary transfer of the rights of economic use of the protected work, the author retains the moral right to claim paternity and to oppose any deformation, mutilation or other modification thereof. to cause damage to the work itself or damage to its honor or reputation.

Intellectual property law (IPR) is therefore of crucial importance in the economic debate: the front pages of newspapers continuously report major disputes between businesses, government and defense movements. National parliaments, the European Union and the North American Free Trade Agreement (NAFTA) repeatedly address the topic. IPR has become one of the *core business* of the World Trade Organization (WTO). Indeed, the "Agreement on Trade-Related Aspects of Intellectual Property Rights" (TRIPS), a founding element of the WTO, constitutes the most important attempt to establish global harmonization of the protection and enforcement of intellectual property (IP), as well as creation of international standards for the protection of patents, copyrights, trademarks and designs. In a word, IPR has emerged as a central issue within the global innovation policy landscape.

Traditionally, the term "intellectual property" indicates a system of legal protection of intangible assets which have an increasingly greater economic relevance: that it refers to the fruits of human creative activity such as artistic and literary works, industrial inventions and models of utility, design and brands. Therefore, the three large areas of copyright, patent law and trademark law fall under the concept of intellectual property.

It is divided, on the one hand, into industrial property relating to inventions (patents), trademarks, industrial designs and models and geographical indications and on the other, into copyrights covering literary and artistic works.

Before delving into the technical treatment of the subject, some brief considerations related to fashion are necessary.

The characterizing element of the fashion sector has to do with the construction of an identity. The image of a brand goes beyond the individual creations which in some way qualifies and places within a sphere capable of influencing the public, who perceives the individual item not only as such but as an expression of a reality that assumes a single meaning. Every Brand is first of all an idea. Its identity is based and consolidated in numerous elements, ranging from the appearance of the products, which express a certain aesthetic idea, to advertising, with which, however, the brand defines itself and its adherence to certain references, also through the choice of testimonials and the distribution and sales channels of the product and the layout of the stores and the price. The perception of the garment as belonging to a specific brand defines it under various profiles, significantly determining what it is as a market good as well as in the dynamics of exchanges. All this is evident if we think about how the consumer looks at and evaluates a dress on which, for example, the Giorgio Armani brand is affixed, and how he would evaluate the same garment if it were anonymous.

This different approach appears justified since the anonymous item is not the same product as the designer garment. The presence of the brand represents a quality of the garment which, together with the intrinsic ones (the cut, the fabric, etc.) turns out to be decisive for the purchase decision and for the attribution of the price and therefore of the value. The reference to the ideal heritage that the brand represents is often entrusted to the brand affixed to the garment, which unifies creations which, although not totally dishomogeneous and inconsistent with each other, could not be traced back to the same identity due to their appearance alone.

No less important is the so-called *secondary meaning* by these elements that are produced over time, generally with the constant presence of the same on the garments of a specific brand and following advertising communication that tends to enhance them as distinctive signs.

Alongside the Brand, intended as a distinctive sign, the creative value must be positioned. The added value of successful fashion houses is creativity. Successful brands are those that have often founded their business on a strong and differentiating creative project. Today, originality, given the high standardization, is increasingly difficult to seek and obtain. Stylists from all over the world seem to have agreed on themes and sources of inspiration, despite knowing that today, in the age of mass communication, the new luxury is originality. In this scenario, fashion must maintain the individual as a point of reference, with all his particular characteristics and needs. Stylists, essentially, have the

obligation to connect to the daily life of the modern consumer in order to offer him adequate solutions.

The style and image directives must therefore come from a single source, in harmony with the Maison's marketing directives and strategies. Creative ability is the distinctive element of the brand. The uniqueness and individuality of the brand are made up of its style and the world it represents, which will take on ever greater importance as elements of consumer choice. The latter, in fact, when faced with a significant increase in supply, tends to be more autonomous and unfaithful and to increasingly focus on individuality. And given that consumers today are much more aware, decisive and capable of choosing, it is necessary for a product to have substance and authenticity.

In a constantly changing system and in the constant struggle to gain a market share, creativity plays a role of fundamental importance in developing ideas that can cope with the complexity of the offer. But the creative process cannot just be an artistic process as an end in itself, but must have a function, must be connected to industry and the market and be at their service. Its objective must be to satisfy the needs and desires of consumers. Creativity must have an operational follow-up, it must produce innovation, it must be the fertile ground where new products and new services are generated. In essence, creativity is the heart of the company.

But what is meant by a creative project? First of all we mean a project with an identity, a strong and captivating concept, a product philosophy, which contains the stylistic inputs for the creation of a collection and which defines the image and style from the beginning, creating a " world", a coordinated image, an unmistakable imprint, giving a strong identity to the product. Secondly, the creative project is the force of personality and personal interpretation. We talk about design care, i.e. care in style, cut, wearability, "meticulous" attention to detail and finishing, constant research and development of materials. Creativity, thus, not only in the product but in all elements of the offer, including the brand image and communication. The creative direction has the task of connecting, making coherent and orchestrating these elements together, in perfect harmony with the needs of the consumer and the market. A valid creative project, therefore, in addition to having to contain all the elements just reported, must necessarily be based on quality, understood in a global sense, which has increasingly become an essential and central factor of the offer and a fundamental element in the consumer's choice : first of all the quality of the individual items bearing the brand, the materials used, the presentation (packaging), high level design, etc.

It is therefore necessary, given the premises, to observe how the discipline regarding the brand and its protection is different from the creation of the work of the designer's pure ingenuity.

The analysis we are going to carry out will start exactly from the notion of brand and how it is created and what the protection measures are preceded by some brief historical reminder

The modern patent system, based on the evaluation of the objectives underlying inventions, was introduced by the Republic of Venice in 1474. The two requirements indicated by the Republic of Venice in order to have the right recognized (the usefulness and novelty of the invention) are still today the cornerstone of the rights in force in all countries. In essence, the inventor and the Public Authority sign a long-term pact in which the inventor undertakes to reveal all the information of his invention, while the State undertakes to provide legal protection aimed at guaranteeing exclusive rights on the economic performances of the invention.

Intellectual property rights have evolved considerably over the centuries, but the long-term pact between inventor and state has remained unchanged. By providing intellectual property rights, the Government ensures the inventor the right to exclude anyone who seeks to use the result of the creative activity without his authorization. In this way, the Government guarantees the inventor a legal monopoly for the exploitation of the invention and ensures enjoyment of the related economic benefits for a limited period of time.

However, the legislation is far from uniform: for the *copyright* disclosure is complete from the moment a book or film is published, while inventions in general must pass an examination of merit before being guaranteed by a patent. All this occurs, however, rarely and the inventor often tries to hide his invention as much as possible, while the Government is unable to ensure full appropriation of the returns from the invention. Through this agreement, the Government is able to disseminate information about the knowledge already generated, and perhaps more importantly, provide an incentive for individuals to invest time and resources in creative activities; in fact, they require time and money, while one is not always sure of the economic return they may or may not generate. Once the inventor has discovered a new device, or a musician has composed a new symphony, it becomes easy for others to exploit the results at very low cost. Without legal protection, inventors and authors are unable to fully exploit their works and obtain adequate economic returns. Consequently, the absence of a suitable public regulation would lead to under-investment in terms of creative activities and therefore to a relative level of production that is not socially optimal. The

intellectual property rights regime can be defined according to the written and customary rules that apply within a specific political community. In some countries (European ones) the Government imposes strong protection for intellectual property rights and owners are guaranteed that infringements will be compensated and prosecuted by law.

The modern use of the term "intellectual property" dates back at least as far as 1867 with the founding of the North German Confederation whose constitution provided for legislative power regarding the protection of intellectual property within the confederation. When the administrative secretariats established by the Paris Convention (1883) and the Berne Convention (1886) merged in 1893 they adopted the term "intellectual property" into their new name, the "United International Bureaux for the Protection of Intellectual Property" (BIRPI).

The organization later moved to Geneva in 1960 and was succeeded in 1967 by the creation of the World Intellectual Property Organization (WIPO), as an agency of the United Nations. Until recently, the purpose of intellectual property law was to provide the lowest possible degree of protection in order to encourage innovation. Historically, therefore, such rights, limited in time and scope, were granted only when they were necessary to encourage invention.



## 2. Intellectual Property

### 2.1. Notion

The concept of intellectual property, very broadly, indicates the legal rights deriving from intellectual and creative activity in the industrial, scientific, literary and artistic fields.

Many countries have legislative systems aimed at protecting intellectual property for two main reasons. The first is to give legal expression to the moral and economic rights of creators in relation to their creations and the rights of citizens regarding access to those creations. The second consists in promoting, on the basis of an act approved by the Government, creative ingenuity, as well as the diffusion and application of the results deriving from it and in encouraging correctness in commercial transactions, in favor of economic and social development. Generally speaking, intellectual property law aims to safeguard creators and other producers of intellectual goods and services by granting them certain rights, limited in time, to control the use of their productions. These rights do not apply to the physical object in which the creation can take shape, but to the intellectual creation itself.

Intellectual property, as already mentioned, is traditionally divided into two branches: industrial property and *copyright*. The convention establishing the World Intellectual Property Organization, signed in Stockholm on 14 July 1967, and which entered into force three years later, establishes that intellectual property rights concern:

- literary, artistic and scientific works, artistic performances, phonograms and broadcasts, inventions in all fields of human activity, - scientific discoveries, - industrial designs and models, trademarks, - service marks, commercial names and denominations, - protection against unfair competition, - all other rights deriving from intellectual activity in the industrial, scientific, literary or artistic fields.

The areas indicated as literary, artistic and scientific works belong to the branch of copyright. The areas referred to as artists' performances, phonograms and broadcasts are usually called "related rights", that is, rights connected to copyright.

### 2.2 Constitution

The Protection of intellectual works is regulated in Italy by Law 22 April 1941 n.633 which aims to guarantee the peaceful economic exploitation of the result of the creative activity through the

attribution of exclusive rights to use the work imitated over time as well as the protection of the personality that the author expresses in the work itself.

The legislation has evolved over the years due to technological progress as well as the need to adapt to the principles established by International Conventions<sup>1</sup>.

What merges to access protection is the creative character placed as a fundamental requirement.

The confirmation of the element of creativity is largely based on the consideration that the work expresses the artist's personal way of seeing and representing reality and therefore being the expression of a new creative content

The creative requirement, which must necessarily express itself in the expressive form of the work itself, must have novelty as a further characteristic. In other words, a work could not be creative if it were not in the first instance "new". It is therefore said that to receive protection a work must differ objectively from those previously created (so-called objective novelty thesis). The establishment of the right occurs through the deposit.

The trademark application can be submitted by anyone: natural person, legal person, associations, bodies etc., including minors, even foreigners as long as they are domiciled in one of the EU countries. More than one person can own a trademark.

The application can be submitted directly by the owner; the owner can decide to be represented. The only subjects authorized to represent at the UIBM are Industrial Property Consultants registered with the association (agent) or lawyers registered with the association (representative). All other professional categories are not authorized to represent at the UIBM, therefore they cannot sign in place of the owner.

The assignment of the responsibility must always be in writing and can be done through a letter of engagement or general power of attorney.

At the European level we meet The EU trademark (EUTM) which is valid in all countries of the European Union (and is automatically extended to new entries). It is a brand that is valid throughout

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<sup>1</sup> *Berne Union Convention for the Protection of Literary and Artistic Works* signed in 1886 and modified in 1971 as well as the *Universal Copyright Convention* signed in Geneva in 1952. See also the *TRIPs Agreement (Trade Related Intellectual Property Rights)* signed in Marrakech in 1994

the entire EU territory, therefore it must be **valid** in all the countries of the Union, it is not possible to limit the geographical scope of protection to just some member states.

Even for unitary brands, the rules on the characteristics of the brand and the requirements must be respected **novelty**, distinctive capacity, lawfulness, etc. (**art. 7 of Regulation (EU) 2015/2424**) which must be so in all European Union countries and in all the relevant official languages, and the Nice Classification.

It is possible to request an EU trademark (EUTM) valid in all countries of the European Union by filing directly on the website of the European office EUIPO <https://euipo.europa.eu/ohimportal/it/>

If you submit an application in Italy and then carry out the extension within 6 months of the Italian national filing, the date of the trademark extended at European level coincides with that of the national filing.

The European Union trade mark is valid for ten years and can be renewed indefinitely for periods of a further ten years.

## 3. Industrial Property

### 3.1. Notion

Finally, the areas indicated as inventions, industrial designs, trademarks, service marks, names and trade names are part of industrial property.

The area indicated as protection against unfair competition can also be considered and included in this last branch.

The term "industrial property" covers industrial inventions and designs. Simply put, inventions are configured as new solutions to technical problems and industrial designs as aesthetic creations that determine the appearance of industrial products. Furthermore, industrial property includes trademarks, service marks, names and trade names, including indications of source and designations of origin. In this case, the aspect of intellectual creation, even if present, is less relevant; what matters is the object of industrial property (generally composed of symbols that transmit information to consumers, in particular regarding products and services offered on the market) and that its protection is aimed at combating unauthorized use and deceptive practices that can mislead consumers. Finally, scientific discoveries should not be confused with inventions.

The Geneva Treaty on the International Registration of Scientific Discoveries (1978) defines a scientific discovery as "*the recognition of hitherto unrecognized and verifiable phenomena, properties, or laws of the material universe*". Inventions represent, however, new solutions to specific technical problems. Such solutions must, of course, rely on the properties and laws of the material universe (otherwise they could not be physically or "technically" applied), but such properties or laws do not necessarily have to be recognized. An invention makes a new technical use of the aforementioned properties or laws, whether they are discovered simultaneously with the creation of the invention, or before, independently of the invention itself.

The most common types of intellectual property rights include: patents, copyrights, industrial design rights, trademarks and, in some jurisdictions, trade secrets. There are more specific varieties of exclusive rights *of its own kind*, such as circuit design rights, plant breeders' rights, supplementary protection certificates for pharmaceuticals and database rights

### 3.2 Brand

In the EU, the legal framework for trade marks is based on a four-tier system for trade mark registration, which coexists with the national trade mark systems harmonized by the Trade Marks Directive (EU Directive 2015/2436 of 16 December 2015, on the approximation of the laws of the Member States relating to trade marks).

The European Union trade mark has a unitary character and equivalent effect throughout the EU. The European Union Intellectual Property Office (EUIPO) is responsible for managing the EU trademark and designs. The EUTM Regulation also establishes the amounts of fees payable to the EUIPO; these amounts shall be set at a level that ensures that the revenue thus generated covers the expenses of the EUIPO and complements existing national trade mark systems.

Directive 98/71/EC of 13 October 1998 approximated national provisions regarding the legal protection of designs and models. Regulation (EC) no. 6/2002 of the Council of 12 December 2001, as amended, established a community system for the protection of designs and models. Council Decision 2006/954/EC and Regulation (EC) No. 1891/2006 of the Council, both of 18 December 2006, linked the Union design registration system to the WIPO international industrial design registration system.

A trademark is - according to the World Intellectual Property Organization - a symbol that identifies the goods belonging to a particular company, distinguishing them from those of competitors. This definition includes two interdependent aspects that are, sometimes, referred to as the different functions of the brand (informational function and distinctive function). In order for the consumer to identify a product, the brand must indicate its source (informative function). This does not mean that the consumer must be informed about the person who physically manufactured the product or who launched it on the market. It is sufficient that the consumer can rely on a given company responsible for the products sold under that given brand. The function of indicating the source presupposes that the brand distinguishes the products of a specific company from those of other companies (distinctive function). The brand can fulfill this function only if it manages to enable the consumer to distinguish the product of a specific company from the products of other companies offered on the market. Therefore, the distinctive function of the brand cannot be separated from its informative one.

The European Mark is a mark that is valid in all countries of the European Union (and is automatically extended to new entries). It is a brand that is valid throughout the entire EU territory, therefore it must be **valid** in all the countries of the Union, it is not possible to limit the geographical scope of protection to just some member states.

Even for unitary brands, the rules on the characteristics of the brand and the requirements must be respected **novelty**, distinctive capacity, lawfulness, etc. (**art. 7 of Regulation (EU) 2015/2424**) which must be so in all the countries of the European Union and in all the relevant official languages, and the Nice Classification<sup>2</sup>.

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<sup>2</sup> The art. 118 of the Treaty on the Functioning of the European Union (**TFEU**) provides that, "as part of the establishment or functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, establish measures for the creation of European qualifications in order to guarantee a **uniform protection of intellectual property rights in the Union** and for the establishment of **centralized authorisation, coordination and control regimes at Union level**".

Regulation (EC) no. 40/94, codified in 2009 as **Regulation (EC) no. 207/2009** and recently modified by **Regulation (EU) no. 2424/2015**, has created a specific system for the protection of **mark for the European Union**, which works **in parallel** at the **protection** of the brands available at the level **of the Member States** in accordance with the respective national protection systems.

The aforementioned Regulation (EC) no. 207/2009 on the European Union trademark, as amended by Regulation (EU) no. 2424/2015, provides, in article 4, the following definition of **European Union trademark**: it can consist of "all signs, such as words, including names of people or drawings, letters, numerals, **colors**, the shape of the products or their packaging and **sounds**, provided that such signs are suitable for:

- a) distinguish the products or services of one undertaking from those of other undertakings;
- (b) be represented in the EU trade mark register in such a way as to enable the competent authorities and the public to determine clearly and precisely the subject matter of the protection granted to their owner".

With this Regulation, the previous term of community trademark was replaced with that, more specific in the aftermath of the Treaty of Lisbon, of «European Union trademark» («EU mark»).

There are therefore different trademark protection systems: national brands, registered by the intellectual property offices of the member states (Italian Patent and Trademark Office - UIBM, for Italy) on the basis of a harmonized system at EU level; the European Union trademarks (already called community trademarks) - which have general effect in all EU countries and are governed by the aforementioned Regulation (EC) no. 207/2009, as amended by Regulation (EU) no. 2424/2015 – which do not replace national trademark systems, constitute a parallel and additional legal framework in the territory of the EU Member States; the international brands, administered by the International Intellectual Property Organization (WIPO), which provide protection in several countries through the Madrid Convention and its Additional Protocol.

In parallel, national systems of trademark protection within the different EU states are harmonized by Council Directive 89/104/EEC, later codified as Directive 2008/95/CE. The Directive (EU) 2015/2436 look at a further and more stringent approximation of substantive and procedural legislation of the Member States regarding trademarks, moving in substantial symmetry with the amendments adopted with Regulation (EU) no. 2424/2015 to the European trademark. To this end, the new Directive repeals, with effect from 15 January 2019, the previous Directive no. 2008/95/EC.

The European delegation law 2016-2017 (L.n. 163/2017) has provided, in the art. 3, the delegation to the Government to adopt one or more legislative decrees for the implementation of the aforementioned Directive (EU) 2015/2436 on

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If you submit an application in Italy and then carry out the extension within 6 months of the Italian national filing, the date of the trademark extended at European level coincides with that of the national filing.

The European Union trade mark is valid for ten years and can be renewed indefinitely for periods of a further ten years.

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the approximation of the laws of the Member States regarding trademarks, as well as for the adaptation of national legislation to the provisions of the aforementioned Regulation (EU) no. 2424/2015 on the European trademark).

The aim of the Harmonization Directive is to ensure that national trademarks registered through the industrial property offices of the Member States are subject to the same substantive rules in terms of registrability and the same conditions of protection under the laws of all Member States.

Together with Regulation (EU) no. 2424/2015, Directive (EU) 2015/2436 therefore constitutes the so-called. "trademark package", i.e. the regulatory intervention desired by the European legislator not only to harmonize the laws of the Member States regarding trademarks, but also to make the national laws as homogeneous as possible and that part of the European law which regulates directly the "European Union trademark", i.e. the industrial property title issued by the EUIPO (European Intellectual Property Office) which has effect in all Member States.

In the implementation of delegation, That must be exercised within twelve months from the date of entry into force of the law in question, the Government is required to follow, in addition to the general procedures for the exercise of the legislative delegations conferred with the European delegation law outlined in article 31 of law no. 234/2012, and to the general principles and criteria of delegation for the implementation of European Union law contained in article 32 of law no. 234/2012 (paragraph 1), also the following guiding principles and criteria (comma 3):

- a) *adapt the provisions of Industrial Property Code (Legislative Decree 10 February 2005, no. 30) to the provisions of Directive 2015/2436 and Regulation (EU) 2424/2015, with express repeal of obsolete provisions;*
- b) *safeguard the possibility of adopting implementing provisions of Directive 2015/2436, also through ministerial decrees of a regulatory nature referred to in article 17, paragraph 3, of law no. 400/1988, in matters not covered by legal provisions and already regulated through regulations, including any updating of the rules contained in the Implementing Regulation of the Industrial Property Code (Ministerial Decree 13 January 2010, no. 33);*
- c) *introduce, in accordance with Directive 2015/2436, cases in which a trademark must be excluded from registration or, if registered, should be declared null and void, both in relation to the impediments to registration and the grounds for invalidity, and in relation to the identification of the signs capable of constituting a trademark;*
- d) *provide in accordance with Directive no. 2015/2436 the right to prohibit the use of a sign for other purposes from that of distinguishing products or services;*
- e) *align the regulation of collective marks with the relevant provisions contained in Directive (EU) 2015/2436, providing that they constitute collective trademarks also include signs and indications which, in commerce, can serve to designate the geographical origin of the products or services and establishing the appropriate provisions of coordination with the regulation of guarantee and certification marks;*
- f) *modify and integrate the rules of procedures before the Appeals Commission against the provisions of the Italian Patent and Trademark Office, in order to guarantee their overall efficiency and speed, also with reference to appeals of the provisions regarding forfeiture and nullity.*

### 3.3 Industrial designs and models

Industrial design, in a general sense, refers to the creative activity aimed at providing mass-produced goods with a certain *packaging*, in compliance with the established cost constraints, which leads the product to visually attract potential consumers while efficiently carrying out its function. In a legal sense, industrial design means the right to protect the original, ornamental and non-functional characteristics of an industrial good or product resulting from design activities. Visual impact is one of the elements that most influences consumers' purchasing decisions, particularly where there is a vast range of products that perform the same function. In this case, if the technical performance of the different products is relatively equal, the price, together with the aesthetic side, will naturally be the determining variable for the consumer's purchase. The legal protection of industrial designs is therefore necessary to protect one of the distinctive elements with which manufacturers develop their competitive advantage. Therefore, granting the creator of a product design legal protection for the effort performed serves as an incentive for investing new resources in promoting production design.



## 4. *The protection of fashion creations*

The protection of fashion creations

Thanks to the worldwide recognition of Italian fashion, the discipline of "fashion law", in which intellectual property plays an increasingly prominent role, increasingly attracts the attention of sector operators, academics and jurisprudence.

Clothes, accessories, jewellery and footwear created by fashion designers that have a creative character and artistic value can be legally protected through the use of various legal provisions.

In our country it is necessary to start from the so-called Industrial property understood as the set of rules and rights that govern distinctive signs such as trademarks, designations of origin and geographical indications. They also deal with technical and design innovations relating to inventions, utility models, industrial designs and models. It therefore appears possible to state that industrial property involves some typical and specific issues of intellectual property.

At a European level it is necessary to point out the so-called community trademark introduced by Regulation 40/1994/EC replaced first by Regulation 207/2009/EC, by Regulation (EU) no. 2015/2424 and recently by Regulation (EU) no. 2017/100 which dictates rules and conditions valid throughout the European territory for the granting of the European trademark. The European trademark gives its owner the possibility of defending its effectiveness throughout the entire territory of the member countries of the European Union and confers, as well as the Italian one, an exclusive right.

Furthermore, the International Conventions which confer the same regulatory text for the subscribing and ratifying countries should not be forgotten. The most important of which is the Stockholm Convention which outlined the guidelines for the international protection of trademarks and led to the establishment of the World Intellectual Property Organization based in Geneva with the aim of encouraging creative activity and promoting the protection of intellectual property in the world.

Having carried out this summary area of investigation regarding the legal instruments present in the legal landscape today, obviously without any claim to exhaustiveness, it is necessary to start from these considerations in order to identify the most effective legal instruments for the protection of the ownership of intellectual works in the field of Fashion.

Firstly, it is necessary to analyze the Copyright law as a form of protection for intellectual creations and evaluate its applicability to fashion creations. As such the provision of article 2 no. 10 of the Italian law on copyright<sup>3</sup> can lend itself to protection provided that the fruit of the work has creativity and artistic value.

Other forms of protection of creations appear to be those relating to Design as a highly effective tool for clothing items precisely because this regulatory reference appears conceptually designed for the protection of the aesthetic appearance of an industrial product.

It is also necessary to pay attention to trademark law which, under certain conditions, can be used to protect certain forms dictated by a unique entrepreneurial origin.

To close the system, there is also the protection granted from unfair competition through the imitation of the shape or style of accessories and clothing, in the presence of shapes not determined by a technical function.

We start, as mentioned, from article 2 n.10 of Law 22 April 1941 n.633 relating to the protection of copyright. The case in question reads:

*“In particular, the following are included in the protection:*

*.... Omitted...*

*n.10) Industrial design works which present creative character and artistic value.”*

In determining the requirements for the purposes of the invoked protection, this regulation expressly recognizes that a design of an industrial nature can also obtain protection through copyright legislation.

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<sup>3</sup> Law 22 April 1941 n.633 on the Protection of copyright and other rights related to its exercise

Starting from the famous case involving the Moon Boots<sup>4</sup> the question that arises is whether the works of the stylist or the creator of high fashion can enjoy less of that "creative character and artistic value" required by the regulation. Now appears possible to affirm that the creator of an item of clothing, with the characteristics reported above-mentioned, can protect his work, also intended for large-scale production, not only through the registration of the design but also through copyright law.

If there is no doubt that the sketches placed at the foundation and development of the creative idea of clothes, shoes, bags, accessories, fabrics, are part of figurative art and as such covered by the legislation in question, it is necessary to ask ourselves some questions about the category of ownership of the products mentioned once manufactured on an industrial level. In a recent article Federica Minio states that<sup>5</sup>: "in general, it can be said that such articles, once created, belong to the macro category of industrial design, of that sector where functional and aesthetic values are inextricably linked to each other and intended for serial production".

On the applicability of the rules on copyright, we would like to point out a further ruling from the European Court of Justice in a dispute concerning the protection of copyright for a model of jeans thanks to the requirement of only "originality" " " <sup>6</sup>

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<sup>4</sup> Court of Milan Section spec. Company, 12/07/2016

*The Moon Boots as a creative work are protected by copyright law*

*The Moon Boots can boast the characteristics of a creative work, endowed with "artistic value" for the purpose of accessing the protection provided for by the art. 2 no. 10 of the law on copyright, in consideration of their particular aesthetic impact, which upon its appearance on the market, profoundly changed the very aesthetic concept of the après-ski boot, becoming a true icon of Italian design and its ability to evolve irreversibly the taste of an entire historical era in relation to everyday objects.*

*Rivista di Diritto Industriale 2017, 2, II, 324*

<sup>5</sup> Fashion creations and Copyright / Artribune in [www.arttribune.com](http://www.arttribune.com) June 2019

<sup>6</sup> EU Court of Justice section. III, 12/09/2019, n.683

*For industrial designs and models, additional copyright protection can be granted where they are recognized as expressions of original works*

*For industrial designs and models, the additional protection of copyright, referred to in [directive 2001/29/Ce](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0029) can only be granted in special cases. As a rule, the protection granted will be that provided for by Directive 98/71/EC regarding the legal protection of community designs and models. This was established by the Court of Cassation, according to which protection under copyright law cannot be granted to models for the sole reason that, beyond their utilitarian purpose,*

The creative character is therefore a requirement that all types of works protected by Copyright have in common and any work that is an expression of the personality of its author is endowed with a creative character. But unlike what happens for other works, the creative character linked to fashion products is not sufficient to grant authorial protection when it comes to industrial design. In addition, the presence of an artistic value is also required.

The law does not establish what is meant by the "artistic value" of an industrial design work. Jurisprudence has intervened on this point by subordinating the recognition of artistic value to parameters that are as objective as possible, such as: recognition by cultural environments. This requirement is manifested through publication in magazines, exposure in exhibitions and museums, the awarding of prizes, articles by critics, the market value acquired, the fame of its author as an artist, etc.

Using this criterion, copyright protection has been recognized for prestigious works of design such as: the Chaise Longue by Le Corbusier, the Nathalie bed, by Vico Magistretti, the Panton Chair by Verner Panton etc.

According to a relevant orientation[7], the artistic value requirement would not be necessary for two-dimensional designs applied to industrial products, such as a fabric pattern. According to this interpretative line, such works would include the definition of figurative art and not industrial designs. Consequently, the creative character would be a sufficient requirement to grant authorial protection.

This opinion is based on the consideration that the 2001 reform was aimed at extending the scope of copyright protection rather than narrowing it. Requiring artistic value for two-dimensional drawings, which were protectable before 2001 by applying the divisibility criterion, would on the contrary lead to a narrowing of the scope of protection.

With the aforementioned ruling of the Court of Justice, the following principle was formulated in practice: a national regulation which subordinates the protection under copyright of clothing items to relief according to which, beyond their utilitarian purpose, they produce their own visual effect

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*they produce a specific aesthetic effect, but only where they are recognized as an expression of original works. The protection connected to copyright, that is, the duration of which is significantly longer, is reserved for objects that deserve to be classified as works. In Guide to law 2019, 40, 32*

which is relevant from an aesthetic point of view. In this cryptic principle, many illustrious authors have seen the end of the requirement of artistic value.

The case submitted to the Court of Justice arises from a preliminary ruling made by the Supreme Court of Portugal, in a dispute in which the G-Star company contested the violation by Cofemel of the copyright on some of its clothing items.

In essence, what the Court seems to want to affirm is that, **for a dress to be considered a work protected by copyright, the aesthetic effect produced is irrelevant. What is important is that the designer freely made creative choices, not conditioned by the utilitarian purpose of the product.**

Consequently, the Italian legislation which subordinates the applicability of copyright to the recognition of artistic value by cultural environments should be considered contrary to Union law.

The Italian expedient of subordinating the authorial protection of industrial designs to the requirement of artistic value has always raised several doubts. One among all: copyright<sup>7</sup> arises with the creation of the work, it is not something that is acquired after the fact. On the contrary, the recognition of artistic value by cultural environments is something that is acquired over time and which, in certain cases, is lost. It therefore cannot be a requirement of authorial protection but rather a simple means of proving the existence of artistic value. A test which, however, for newly created works, would be effectively impossible.

The introduction of artistic value as an additional requirement to the creative character, however, has one objective: to limit an indiscriminate extension of authorial protection in the industrial sector. Copyright, unlike the protection offered by the registration of industrial designs and models, has a very long duration: 70 years from the death of the author. Furthermore, Copyright arises automatically, without the need for any registration. Such extensive and difficult to ascertain protection risks creating a brake on free competition and investments, as it is a source of great uncertainty.

What would happen in a "crowded" sector such as fashion if authorial protection were applied to each dress with a minimum creative character, as happens for any literary or figurative art work? For a company to launch a new dress or even simply resell it would be like walking on eggshells. The

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<sup>7</sup> Milan Court 05/25/2010, n. 6884

possibility of copying something already done in the past, even by completely unknown designers, would become extremely probable and any investment would involve an enormous risk.

Today more than ever, we therefore need a rethinking of Copyright at a European level, which places a utilitarian principle at its basis: **copyright must have as its ultimate goal the promotion of creativity and culture and not represent a brake on them.** In the Anglo-Saxon world, Copyright was not created as a protection of the author's personality but as an incentive to create. The author is granted monopoly rights on his works to encourage him to create more in the common interest. Probably, in the field of industrial design there is no need for this incentive. This is because the market and free competition are sufficient stimuli to promote the creation of increasingly beautiful and captivating designs.

Obviously, this does not mean that copying can be done freely within the industry. But to avoid this, the rules on unfair competition and those on industrial designs already exist. Consequently, although legally questionable, the interpretation given by the Italian Courts is perhaps correct, which restricts the application of copyright to industrial models which are first of all works of art, such as Chais Longue by Le Corbusier. Only in these rare and limited cases can authorial protection be justified as protection of the artist's personality itself.

Let's now see in what forms the creation of a product in the fashion sector can find protection.

The protection of the fashion garment as a design or model appears to be of well-established application.

In Italy, creations in the field of fashion are easily protectable both as a design or model pursuant to and for the purposes of articles 31 - 44 of the Industrial and Intellectual Property Code.

The creation of the designer and stylist can therefore be primarily protected through registration (lasting 5 years renewable up to a maximum of 25) for "design or model"<sup>8</sup>

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<sup>8</sup> Article 31 C.P.I.

*"1. The appearance of the entire product or part of it as resulting, in particular, from the characteristics of the lines, contours, colours, shape, surface structure, or materials of the product can be the object of registration as designs and models. itself or its ornamentation, provided that they are new and have an individual character.*

*the product itself may constitute the object of registration as designs and models, or its ornamentation, provided that they are new and have an individual character".*

Models and drawings must meet certain requirements in order to be registered. They must be new in the sense of possessing the requirement of originality and therefore must not have been disclosed before the date of submission of the application for registration or before the priority date, if it has been claimed. In practice, in order to be registered, a model or design must not be identical or similar to others already present, that is, it must differ in non-irrelevant details.

Furthermore, a model or design must have an individual character, the general impression it must arouse in the informed user must be different from that which is aroused in that user by any other model or any other design which has been disclosed before the date of presentation of the application for registration or before priority, always if the latter has been claimed.

Characteristics of the appearance of the product determined only by the technical function of the product itself cannot be registered as models or designs.

It is also clarified that with a single application it is possible to request the registration of multiple models and designs but only if these are intended to be incorporated into objects included in the same class of the international classification of designs and models, pursuant to the provisions of which to the Locarno Agreement as an international classification system for industrial designs, managed by [World Intellectual Property Organization \(WIPO\)](#).

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*2. Product means any industrial or artisanal object, including, among other things, components that must be assembled to form a complex product, packaging, presentations, graphic symbols and topographical characters, excluding computer programs.*

*3. A complex product means a product made up of multiple components that can be replaced, allowing the product to be disassembled and reassembled."*

#### 4.1 Cumulative or alternative protections?

*The possibility of cumulating the two protections occurred only with the transposition of Directive 98/71/EC, which on the one hand innovated the "designs and models" sector significantly and on the other introduced n. 10 of the Author Law*

*Without going into too much detail on the concepts of creative character and artistic value, we can say that the first materialises in the personal imprint and the second that aesthetic something that makes the garment high-end and therefore designer.*

*The two protection mechanisms are not alternatives but they can be **cumulative**, furthermore, the protection from the point of view of intellectual property extends up to 70 years from the death of the author and therefore has a temporal extension far superior to industrial protection.*

*It appears interesting to note a recent ruling from the Court of Milan<sup>9</sup> has recognized the applicability of the legislation on copyright to the work of a seamstress creating high fashion clothes regarding some garments published online.*

*Having exposed the possibility of protecting the dress also through the law on copyright, and therefore the possibility of taking various judicial actions to put an end to the illicit conduct of those who illegitimately reproduce the creations of others, it is legitimate to ask whether, like the lines of registered designs, there can also be protection in criminal proceedings for unregistered creative works.*

*With a recent provision, filed on 22 January 2018, the Supreme Court deemed the crime referred to in art. 517 of the penal code for the unauthorised reproduction of design works which, regardless of*

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<sup>9</sup> Court of Milan, Specialized Section on business matters – Section. A, 10 December 2014, in Business Law: In this case, the designer had created corsets of particular value - with coordinated elements, deemed by the Court to be "unique items" - commissioned by a well-known showgirl who, after wearing them for a photo shoot, had used those images on its website, however failing to report the name of the "creative seamstress" both in the credits and alongside the photographs.

*In concrete terms, the Court recognized the "moral right pursuant to art. 20 L.A. of the stylist to claim and see the paternity of the work recognized and to oppose deformations or transformations prejudicial to honor and reputation". So he ordered the showgirl, the fashion stylist, the company commissioning the photo shoot and the owner of the site to "insert the name of the designer in the margin of the images of the clothes or among the credits of the site".*



*the registration relating to industrial property rights, to be - as above - protected by art. 2, no. 10, law n. 633 of 1941 (copyright law).*

*In the aforementioned ruling, the Court of Cassation specified that the crime of manufacturing and trading goods made by usurping industrial property rights is also integrated in the case of industrial design works intended for serial production, which are protectable pursuant to art. 2, no. 10, of law no. 633 of 1941 where the conditions indicated by law apply, given by the creative character and artistic content of the work*

*The protection is applicable not only when the model is used to create handcrafted products or unique pieces but also in the case of industrial production of the object of the design, in fact the Judge of Laws reiterated that it must be observed that large-scale production results from all meaningless, since every work of industrial design is destined to be exploited through serial manufacturing processes.*

*In summary, it is possible to state that the creator of an item of clothing, or of any industrial design, with a creative and artistic character, will be able to protect his work - also intended for large-scale production - not only through the deposit of the design but also through the law on copyright and this protection will also be extended in criminal matters with punishment for those who reproduce other people's models without authorisation.*

## **5. Tips for protection during the negotiation phase**

It seems appropriate to make some brief mention regarding the protections to be adopted during the negotiation phase.

Where the collection undergoes "adaptations" during the production phase that distort the designer's concept, a specific solution must be provided so that the "idea" is always safeguarded. It is therefore advisable to include some guarantees and in the most serious cases a right of veto on the release of the line that has undergone transformations that are completely different from the stylist's message. In practice, this is the moment in which the Stylist and Production discuss assiduously to agree on the necessary adaptations but it is believed that the last word always belongs to the stylist.

From an economic point of view, it is important to provide, in the case of variable compensation linked to the number of garments produced, the possibility for the stylist to carry out one or more visits also through trusted professionals to the Maison in order to concretely verify the exact quantity of items produced and items sold.

Further measures may be found regarding ownership of drafts and drawings, stylistic indications, etc.

Lawyer Luca Giannini

## ***6. Best Practices for Copyright and IP Management in Co-design and Co-development***

### **Establishing Clear Ownership and Usage Rights**

One of the fundamental best practices for managing copyright and intellectual property in co-design and co-development is to establish clear ownership and usage rights from the outset. This can be achieved through collaboration agreements and contracts that clearly define the ownership of copyright in the jointly created work. It is essential to determine whether the ownership will be shared, vested in a particular party, or jointly held by all collaborators. Additionally, the agreements should outline the scope and limitations of usage rights granted to each party, including commercial use, sublicensing, and modifications.

### **Non-disclosure Agreements and Confidentiality**

Protecting sensitive information and trade secrets is crucial in co-design and co-development scenarios. To safeguard confidential information, it is advisable to include non-disclosure agreements (NDAs) in collaboration agreements. NDAs establish legal obligations for all parties involved to maintain confidentiality throughout the collaboration process. These agreements should clearly outline the types of information considered confidential, the duration of confidentiality obligations, and the consequences of breaches.

### **Documentation and Record-keeping**

Maintaining proper documentation and record-keeping is essential for copyright and IP management. It is recommended to document all aspects of the co-design and co-development process, including meetings, discussions, and decision-making processes. This documentation can serve as evidence in case of disputes or infringement claims. Additionally, keeping records of copyright registrations, trademark registrations, and any other relevant intellectual property registrations can help establish proof of ownership and strengthen the legal position of stakeholders.

### **Regular Communication and Collaboration**

Open and regular communication among all collaborators is key to successful copyright and IP management in co-design and co-development. Clear communication channels should be established to discuss copyright ownership, usage rights, and any concerns related to intellectual

property. Regular collaboration sessions allow stakeholders to align their understanding of copyright and IP issues, address any potential conflicts, and ensure that all parties are on the same page regarding the management and protection of intellectual property.

### **Educating Designers and Collaborators**

Education and awareness play a vital role in effective copyright and IP management. Designers, collaborators, and other stakeholders should receive proper training and education on copyright law, intellectual property rights, and best practices for managing and protecting creative works. This includes understanding copyright infringement and the importance of obtaining appropriate permissions and licenses when using copyrighted material from external sources.

By implementing these best practices, stakeholders can navigate the complexities of copyright and intellectual property management in co-design and co-development scenarios. These practices foster a culture of respect for intellectual property rights, minimize legal disputes, and promote fair and ethical collaboration within the fashion and design industry.

## ***7. Attachments: Templates and formats for copyright agreements***

Note that the following are general templates, and you may need to customize them according to the specific details of your project and jurisdiction.

It's always advisable to consult with a legal professional to ensure that the agreement is tailored to your specific needs and legally enforceable in your specific jurisdiction.

Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union.

Neither the European Union nor the granting authority can be held responsible for them.

COMMERCIAL CONTRACT

Between

Mr. ZZZZZZZZZZZZ resident in xxxxxxxx, xxxxxxxx Street, n.xxxx, tax code n. xxxxxxxxxxxxxxxx

AND

Mr. XXXXXX resident in xxxxxxxx, xxxxxxxx Street, n.xxxx, tax code n. xxxxxxxxxxxxxxxx

AS WELL AS'

Mr. YYYYYYY resident in xxxxxxxx, xxxxxxxx Street, n.xxxx, tax code n. xxxxxxxxxxxxxxxx; on the  
one hand

(cumulatively defined as the "Grantors")

AND

The Company xxxxxxxxxxxx with headquarters in xxxxxxxx, xxxxxxxx Street, n.°xxxxxxx VAT  
number n.° xxxxxxxxxx, email address: xxxxxxxx as legal representative of Mr. xxxxxxxxxxxx

(hereinafter also "Licensee")

given that

- a) The licensors are owners of intellectual creations relating to models and designs of "women's" clothing and in particular
- b) Mr. xxxxxxxxxx is the exclusive owner of 30 designs relating to "women's" garments for the A/W 24/25 Collection;
- c) Mr YYYYYYYY is the owner of a patent for an industrial invention relating to a particular fabric by virtue of registration application No 0000000000, valid for the European Community and some countries around the world as better described and identified in Annex A of this Contract
- d) Mr zzzzzz is an expert in industrial design and has created 5 innovative, eco-sustainable and functional packaging models for the presentation of the Collection
- e) The licensee is equipped with the structure, organisation, human resources, equipment, technical production and commercial knowledge to carry out the production and sale of "women's" clothing in general;
- f) It is the intention of the parties to regulate a licensing agreement for the aforementioned

brand which allows the production and distribution of the Licensed Products as better identified in article 1.2. which follows, on the part of the licensee, as well as the research, development and style activity consisting of the samples, the bill of materials and the technical data sheet of each product, the models, the technical operating manuals, the color cards, the tolerability, in the patterns, in the sketches, in the packaging, in the images, in the explanation of the strategies and in the advertising distribution, etc.

All this being said:

YOU AGREE AND STIPULATE AS FOLLOWS

### **Article 1. Definitions**

1.1. The term "Territory" means the Italian territory.

1.2. The term "Licensed Products" refers to the products and in general everything deriving from the Licensors, intended for physical sale and not via online channels.

1.3. The term "Royalty" means the amount owed by the Licensee to the Licensors to be calculated on the Gross Sales Revenue. This amount will be paid by the Licensee to the Licensor according to the following Article 10 of this Agreement.

1.4. The term "Duration" means the period of validity of this Contract which starts from the date of xxxxxxxx and ends on xxxxxxxx without the possibility of extension. In particular, at the end of the Term the Licensee will only be able to dispose of the warehouse stock for a maximum period of 180 days after which no possibility of selling the Licensed Products will be possible.

1.7. The term "Sell-In Price" means the final sales price of the Licensed Products to the retailer, as shown in the sales invoice and the Licensor's accounting records.

### **2. Object**

2.1. The Licensors grant the license of the Patent with regard to the exclusive right of manufacture, physical sale, use as well as to mark and promote the Licensed Products in the Territory, for the Duration, the use of the relevant designs referred to in point a) of the introduction and the assistance of the packaging ideas referred to in point d).

2.2. The licensee does not have the right to grant sub-licenses, total or partial, relating to the Brand and/or the Licensed Products without the written consent of the Licensor.

2.3. The Licensee may not use the Trademark in relation to products other than the Licensed Products.

### **3. Patent Guarantees**

3.1. The Grantors declare and guarantee that they are owners of the Patent referred to in point a)

and of the drawings referred to in point b) of the premises. They declare that the procedures for filing the application for registration and granting of the Patent have been diligently carried out; that there are no forfeiture or nullity proceedings established, that no infringement proceedings are underway; unaware of third party rights that may be violated by its own **Patent and the use of the Designs** referred to in the introduction

#### **4. Methods of using the Trademark**

4.1. The Licensee will use the points referred to in the introduction for the entire duration of this contract, strictly adhering to the indications provided by the Licensors regarding position, shape, size, color, etc. and in general will comply with all the instructions of the compatible Licensors with the industrial development of the lines.

4.2. The Licensee undertakes not to register and not to have registered Patents or designs that are in competition with the subject of this agreement

4.4. In the event of nullification or termination of this contract for any reason, the Licensee will immediately cease any use of the foregoing

#### **5 Manufacture of the Licensed Products – Obligations of the Licensee**

5.1. The manufacturing of the Licensed Products must be carried out in compliance with the regulations currently in force in the individual territories in which the Licensed Products will be produced and marketed, including the regulations relating to the safety and health of the consumer and the regulations relating to the indications on the composition of the materials and on their disposal. The Licensed Products will be manufactured in compliance with customs regulations and will satisfy all the requirements necessary for importation into the territories in which they will be marketed. The Licensed Products will be manufactured in order to guarantee compliance with all the requirements established by the legislation applicable in the territories in which they will be marketed, or otherwise distributed. The Licensed Products will be manufactured in workplaces and using machinery and equipment that meet adequate safety, hygiene and health requirements. No form of illicit exploitation of the workforce, including child labor, is permitted in the production of the Licensed Products.

5.2. The Licensee undertakes to comply with the highest levels of standards and qualitative content in the production, packaging and distribution of the Licensed Products

To this end, the Licensors have the right to subject the Licensed Products to verification and control of both the prototypes and samples and those in distribution. These will have the right to access the production units or those of any third-party sub-contractors involved in the production process, through their expressly authorized representatives with expertise in the

matter. This right will be exercised without notice and access will be permitted during regular working hours and without jeopardizing the orderly carrying out of work. The checks carried out by the Grantors will in no case be seen as limiting or reducing the obligations and responsibilities inherent to production as provided for in this Contract.

## **6. Distribution and sales**

6.1. The Licensor declares that he knows and approves the commercial sales network of the Licensee and the same cannot be modified, unless agreed with the Licensors.

The parties agree that the Licensee distributes only through physical distribution channels while the online sales channel is excluded from this License, referring to the sole prerogative of the Licensors expressly excluded by the parties in this contract.

## **7. Promotion and advertising**

7.1. The Licensee undertakes to carry out promotional campaigns and press office and public relations activities regarding the Licensed Products, bearing the costs

## **8. Consideration and Royalties**

8.1. As payment for the license subject of this contract, including consultancy and stylistic assistance, pursuant to this contract, the Licensee will pay Royalties to the Licensors equal to a percentage of the Gross Sales Revenue of the Licensed Products for each season sales as indicated below:

(i) 8% (eight percent) of the Gross Sales Revenue of each season

8.2. Royalties payments will be made to the Licensors no later than 30 (thirty) days from the issue of the invoice. To this end, the Licensee undertakes to monitor the issuing of invoices for orders and reorders, providing monthly reports to the licensor on the same.

## **9. Confidentiality**

9.1. In the execution of this contract, the Parties undertake to respect and ensure that their employees and suppliers respect the confidentiality obligation on all information, data, documentation and news, in any form provided, which are considered confidential and not aimed at public dissemination, including, but not limited to, models, prototypes, industrial rights, etc..

9.2. the Parties will adopt and have suppliers adopt all necessary prevention measures and, in particular, all legal actions necessary to avoid the dissemination and use of information deemed confidential.



9.3. If the dissemination of material or information deemed confidential to third parties was caused by acts or facts directly attributable to the Parties and/or their employees and/or suppliers, the responsible will be required to compensate the other party for any damages related to the breach of confidentiality obligation.

9.4. The confidentiality obligation referred to in this article will continue to have value even after the conclusion of this contract and in any case until the confidential information becomes public domain.

### **10 Duration, withdrawal and termination of the contract**

10.1. This agreement will enter into force on xxx xxxxxxxxx 20xx and will remain in force for the "duration"

10.2. The termination or resolution of this contract will not prevent the Licensee from selling, in accordance with the terms and conditions set forth herein, the Licensed Products that have already been manufactured or are being manufactured by the same or in relation to which the itself has stipulated sales contracts with third parties,

### **11. Communications**

11.1. Any communication that each Party will make to the other Parties in relation to this contract must be transmitted, unless otherwise agreed in writing between the Parties, to the legal head office / address of the Parties as indicated in the epigraph to this contract by one of the following means: e-mail to the following addresses deemed by the parties to be the only valid ones.

### **12. Applicable law and competent court**

12.1. This contract is regulated by the xxx law. For anything not expressly provided for in this contract, the provisions of the xxx Code and the laws in force will apply. The Parties mutually acknowledge that in the event of disputes, the Court of xxxxxxxx will be competent.

Read, signed and subscribed in xxxxxxxxxxxx there \_\_\_\_\_

The Licensors

the Licensee

# Sample Collaboration Agreement

[Insert Title of Collaboration Agreement]

This Collaboration Agreement ("Agreement") is entered into between [Name of Designer/Brand] ("Party A") and [Name of Collaborator/Brand] ("Party B") on [Date].

## Purpose:

The purpose of this Agreement is to establish the terms and conditions governing the collaboration between Party A and Party B for the co-design and co-development of [Describe the nature of the collaboration and the product(s) or project(s) involved].

## Copyright Ownership:

2.1 The parties agree that copyright ownership in the jointly created works will be shared as follows: [Specify the distribution of copyright ownership, e.g., equal ownership, specific percentages, etc.].

2.2 Each party acknowledges that they retain copyright ownership over their respective pre-existing works incorporated into the jointly created works.

## Usage Rights:

3.1 Each party grants the other party a non-exclusive license to use the jointly created works for the purpose of the collaboration.

3.2 Party A shall have the right to use the jointly created works for commercial purposes, including reproduction, distribution, and display, subject to the restrictions outlined in this Agreement.

3.3 Party B shall have the right to use the jointly created works for promotional purposes, subject to the approval of Party A.

## Confidentiality:

4.1 Both parties agree to maintain the confidentiality of all confidential information shared during the collaboration. This includes any proprietary information, trade secrets, design concepts, and technical details.

4.2 The parties shall not disclose any confidential information to third parties without the prior written consent of the other party, except as required by law.

## Dispute Resolution:

5.1 In the event of any disputes arising from or in connection with this Agreement, the parties shall first attempt to resolve the dispute amicably through good-faith negotiations.

5.2 If a resolution cannot be reached through negotiation, the parties agree to submit the dispute to mediation or arbitration in accordance with the laws of [Jurisdiction], as mutually agreed upon by both parties.

Term and Termination:

6.1 This Agreement shall commence on the effective date and continue until the completion of the collaboration, unless terminated earlier as provided herein.

6.2 Either party may terminate this Agreement by providing written notice to the other party in the event of a material breach of the Agreement by the other party.

Governing Law:

This Agreement shall be governed by and construed in accordance with the laws of [Jurisdiction]. Any disputes arising from or relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of [Jurisdiction].

Entire Agreement:

This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof and supersedes all prior agreements, understandings, and communications, whether oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Collaboration Agreement as of the date first above written.

[Name of Party A]

[Signature]

[Name of Party B]

[Signature]

# Non-Disclosure Agreement (NDA) for Co-Design and Co-Development in the Fashion and Design Industry

## 1. Introduction:

This Non-Disclosure Agreement (the "Agreement") is entered into as of [Date], by and between:

[Designer 1's Full Name and Address] ("Disclosing Party")

and

[Designer 2's Full Name and Address] ("Receiving Party")

(Hereinafter collectively referred to as the "Parties").

## 2. Purpose:

The Disclosing Party intends to disclose certain confidential information related to the design and development of [Name of the Project/Product] (the "Project") to the Receiving Party for the purpose of collaboration.

## 3. Definition of Confidential Information:

For the purposes of this Agreement, "Confidential Information" shall mean any non-public information, including but not limited to designs, prototypes, concepts, sketches, trade secrets, and any other information related to the Project.

## 4. Obligations of the Receiving Party:

- a. The Receiving Party agrees to keep all Confidential Information strictly confidential and not to disclose, reproduce, or use such information for any purpose other than the collaboration on the Project.
- b. The Receiving Party shall take all necessary precautions to prevent unauthorized disclosure or use of the Confidential Information, including but not limited to implementing reasonable security measures.

## 5. Permitted Disclosures:

The obligations of confidentiality shall not apply to information that is:

- i. Already known to the Receiving Party at the time of disclosure.
- ii. Publicly available or becomes publicly available without a breach of this Agreement.
- iii. Independently developed by the Receiving Party without reference to the Confidential Information.

**6. Duration of Confidentiality:**

The Receiving Party's obligation to maintain the confidentiality of the Confidential Information shall continue for a period of [X years] from the date of disclosure or until the Confidential Information becomes public knowledge, whichever occurs first.

**7. Return or Destruction of Information:**

Upon the Disclosing Party's written request or the termination of the collaboration, the Receiving Party shall promptly return or, at the Disclosing Party's option, destroy all copies of the Confidential Information in their possession.

**8. Governing Law:**

This Agreement shall be governed by and construed in accordance with the laws of [Jurisdiction].

**9. Miscellaneous:**

- a. This Agreement constitutes the entire understanding between the Parties and supersedes all prior agreements or understandings, whether oral or written.
- b. Any amendments to this Agreement must be made in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Non-Disclosure Agreement as of the date first above written.

[Disclosing Party's Full Name] Date

[Receiving Party's Full Name] Date